PP

v.

UTHAYA KUMAR PONNUSAMY

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
RICHARD MALANJUM JCA
NIK HASHIM JCA
[CRIMINAL APPEAL NO: B-09-14-2003]
18 APRIL 2005

CRIMINAL PROCEDURE: *Acquittal or discharge - Discharge of respondent of s. 506 Penal Code charge - Magistrate before whom charge under s. 506 Penal Code was brought had already dealt with charge under s. 228 of same - Whether order of discharge justified*

CRIMINAL PROCEDURE: *Charge - Framing or particulars - Section 506 Penal Code - Whether mens rea required to be stated*

The Public Prosecutor appealed against an order made by the learned judge in his revisionary jurisdiction discharging the respondent in respect of a charge brought under s. 506 of the Penal Code. It was argued on behalf of the Public Prosecutor that the reasons given by the learned judge did not represent the law governing s. 506 of the Penal Code ('PC').

Held (dismissing the appeal):
Per Gopal Sri Ram JCA delivering the judgment of the court:

[1] When the judgment of the learned judge was read as a whole, it would seem to require the prosecution to specify the *mens rea* of the charge. If that was the meaning of what the learned judge meant to convey, it was vigorously dissented to. It is settled law that the ingredients needed to be specified in a charge depends on the way dictated by statute. On a proper construction of s. 506 PC, no *mens rea* is required to be stated in the charge. The learned judge was incorrect when ordering the discharge on this ground. However, there were other grounds to justify the order made by the learned judge. The magistrate before whom the charge under s. 506 PC was ventilated, had already dealt with a charge under s. 228 of the same against the respondent (See [2003] 2 CLJ 549). That was an unsatisfactory state of affairs. (pp 368 c-e & 369 e)

[Order of learned judge affirmed but on different grounds.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Pendakwa Raya merayu terhadap perintah hakim yang arif yang dibuat di dalam bidang kuasa semakannya, melepaskan responden daripada pertuduhan di bawah s. 506 Kanun Keseksaan. Ia dihujah bagi pihak pendakwa raya bahawa alasan-alasan yang diberikan oleh hakim yang arif tidak memaparkan undang-undang di bawah s. 506 Kanun Keseksaan ('KK').

Diputuskan (menolak rayuan):
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

[1] Apabila penghakiman hakim yang arif dibaca secara menyeluruh, ia kelihatan memerlukan pendakwaan untuk mencatatkan *mens rea* pertuduhan tersebut. Jika itu adalah makna hakim yang arif ingin menyampaikan, ia ditentang sepenuhnya. Ia adalah undang-undang tetap bahawa ingredien yang patut dicatatkan dalam sesuatu pertuduhan bergantung kepada cara yang ditetapkan oleh statut. Pentafsiran betul s. 506 KK menunjukkan tiada *mens rea* diperlukan untuk dicatatkan dalam satu pertuduhan. Hakim yang arif tidak betul apabila memerintahkan pelepasan atas alasan itu. Meskipun, terdapat alasan-alasan lain untuk menjustifikasikan perintah yang dibuat oleh hakim yang arif. Majistret di hadapan mana pertuduhan di bawah s. 506 KK di bawakan, telah pun bicara atas satu pertuduhan di bawah s. 228 KK terhadap responden (Lihat [2003] 2 CLJ 549). Itu satu keadaan yang tidak memuaskan.

Perintah hakim yang arif disahkan tetapi atas alasan-alasan lain.]

Legislation referred to:
Penal Code, ss. 228, 506

For the respondent - M Manoharan (PW Moorthy, VK Sharma, WK Chan, S Kulasegaran with him); M/s M Manoharan & Co
Watching brief - Edmund Bon (Amer Hamzah Arshad with him)

[Appeal from High Court, Shah Alam; Criminal Revision No: 43-1-2003]

Reported by Usha Thiagarajah

JUDGMENT

Gopal Sri Ram JCA:

This is the judgment of the court in relation to the appeal by the Public Prosecutor against an order made by Suriyadi J in the Shah Alam High Court when acting in his revisionary jurisdiction. The learned judge made an order discharging the respondent before us in respect of a charge brought before him under the s. 506 of the Penal Code.

The charge in question is as follows:

> Bahawa kamu, pada 3hb September 2002, jam lebih kurang 4.15 petang, bertempat di Mahkamah Majistret Sepang, di dalam daerah Sepang di Negeri Selangor Darul Ehsan, telah menakutkan secara jenayah terhadap Ponaiya a/l Ganasan, secara mengugut dengan perkataan, 'You watch out, I will fix you, we fix you', maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 506 Kanun Keseksaan.
>
> (Translated Version:)
>
> That you on September 3, 2002 in and about 4.15 p.m. at the Sepang Magistrate Court, in the district of Sepang, Selangor Darul Ehsan, had criminally intimidated Poniaya a/l Ganasan, by the threatening words 'You watch out, I will fix you, we fix you', and thus had committed an offence punishable under section 506 of the Penal Code.)

In making his order the learned judge gave the following reasons:

> I now touch on the next poser. The charge had stated that Mr Uthayakumar had uttered the intimidating words 'You watch out, I will fix you, we fix you', with the applicant profusely denying uttering them. The learned deputy public prosecutor had vehemently stressed that no court would have been able to conclude that the charges were groundless when the facts were yet adduced. Unlike the laborious days when preliminary enquiries existed, and courts would have been able to come to some conclusion based on the recorded testimonies, the current predicament was certainly of no help to the magistrate. Much as I agree in part with his argument, I was certainly not denied of some other facts before me, in particular the ingredients packed in the other charges.
>
> Without the necessity of repeating the above charges, in particular the second and/or the alternative charges, the incidents of insulting and distracting (section 228) had taken place during the hours of 4.15pm which was smack in the middle of the judicial proceedings. The supposed intimidating words, as per the section 506 charge, likewise had occurred at about the same time the altercation was taking place. Yet a scrutiny of the notes of proceedings of 3 September 2002 failed to reveal any utterances of that nature, at that time or

> place, the opportunity, or for that matter comments by the court. The notes of proceedings were more than sufficient to rebut the first charge. In other words, even at that early stage, prior to the commencement, let alone the closing of the prosecution's case, the charge was apparent to all and sundry that it was groundless.

This morning, the learned deputy public prosecutor has complained that the foregoing reasons of the learned judge do not represent the law governing s. 506 of the Penal Code. In other words, the charge was not groundless.

We are in agreement with the submission of the learned deputy. In essence, when the judgment of the learned judge is read as a whole, it would seem to require the prosecution to specify the mens rea of the charge. If that is the meaning of what the learned judge meant to convey, we must enter our vigorous dissent to this. It is settled law that the ingredients needed to be specified in a charge depends on the way dictated by statute. On a proper construction of s. 506 of the Penal Code, we are satisfied that no mens rea is required to be stated in the charge. We do not agree with the learned judge when ordering the discharge on this ground.

But that is not the end of the matter. Having perused the records most anxiously, we are satisfied that there are other grounds to justify the order. We do not propose to go into these grounds as it may affect any subsequent proceedings which may follow. Suffice to say, the learned magistrate before whom the charge under s. 506 was ventilated, has already dealt with a charge under s. 228 of the Penal Code which reads as follows:

> Bahawa kamu, pada 3 September 2002, jam lebih kurang 4.15 petang, bertempat di Mahkamah Majistret Sepang, di dalam daerah Sepang di Negeri Selangor Darul Ehsan, telah dengan sengaja memberi aib kepada Majistret Norazmi bin Mohd Narawi semasa prosiding siasatan kematian Tharmarajen a/l Subramaniam apabila Majistret tersebut telah mengarah kamu untuk diam dan jika enggan kamu boleh diarahkan keluar dari Mahkamah tetapi sebaliknya kamu memberitahu Majistret tersebut, kamu tidak mahu keluar daripada Mahkamah dan akan terus bercakap dan dengan ini kamu telah melakukan suatu kesalahan yang boleh dihukum, maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 228 Kanun Keseksaan.
>
> (Translated Version:)
>
> That you on September 3, 2002 in and about 4.15 p.m. at the Sepang Magistrate Court, in the district of Sepang, Selangor Darul Ehsan, had intentionally insulted the Magistret Norazmi bin Mohd Narawi during the inquest of Thatmarajen a/l Subramaniam, when the said Magistrate had ordered you to be quiet, in defiance of which you would be ordered to leave the court, has refused and informed that Magistrate of your desire to carry on talking, and thus had committed an offence under section 228 of the Penal Code.

Pertuduhan Alternatif kepada Pertuduhan Kedua:

Bahawa kamu, pada 3 September 2002, jam lebih kurang 4.15 petang, bertempat di Mahkamah Majistret Sepang, di dalam daerah Sepang di Negeri Selangor Darul Ehsan, telah dengan sengaja mengganggu Majistret Norazmi bin Mohd Narawi semasa prosiding siasatan kematian Tharmarajen a/l Subramaniam apabila Majistret mengarah kamu untuk diam dan jika enggan kamu boleh diarahkan keluar dari Mahkamah tetapi sebaliknya kamu memberitahu Majistret tersebut, kamu tidak mahu keluar daripada Mahkamah dan akan terus bercakap sehingga menyebabkan Majistret menangguhkan prosiding siasatan kematian tersebut dan dengan ini kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 228 Kanun Keseksaan.

(Translated Version:)

That you on September 3, 2002 in and about 4.15 p.m. at the Sepang Magistrate Court, in the district of Sepang, Selangor Darul Ehsan, had intentionally distracted the Magistrate Norazmi bin Mohd Narawi during the inquest of Thatmarajen a/l Subramaniam, when the said Magistrate had ordered you to be quiet, in defiance of which you would be ordered to leave the court, has refused and informed that Magistrate of your desire to carry on talking, resulting in the inquest proceedings being adjourned, and thus had committed an offence under section 228 of the Penal Code.

The magistrate who was involved in the proceedings involving the charge under s. 228 of the Penal Code also proceeded to hear and deal with the charge under s. 506 of the Penal Code in respect of the respondent's bail application. That, in our view, was an unsatisfactory state of affairs. Suffice for record, the respondent did apologise to the magistrate. That should be the end of matter insofar the charge under s. 228 of the Penal Code is concerned which is now not being pursued before us.

In the circumstances of this case the appeal is hereby dismissed. We agree that there should be a discharge not amounting to an acquittal. No further order is appropriate. We affirm the decision of the learned judge but on different grounds.